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March 23, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Request for Limited Modification of LATA Boundaries to Provide ELCS Between Verizon's Lehigh Valley Exchange Area (Northeast 232 LATA) and the Palmerton Telephone Company's Palmerton Exchange Area (Philadelphia 228 LATA); CC Docket No. 96-159

Dear Ms. Salas:

Verizon Pennsylvania, Inc., hereby submits this request for a LATA boundary modification to provide Expanded Local Calling Service (ELCS) between Verizon's Lehigh Valley Exchange Area (Northeast 232 LATA) and the Palmerton Telephone Company's Palmerton Exchange Area (Philadelphia 228 LATA).

In its order released July 15, 1997¹ ("Order"), the Commission established an ongoing process for requesting LATA boundary modifications to provide ELCS. This request is filed pursuant to the provisions contained in that order. Attached you will find the support documentation required by the Commission to approve the requested modification.

Should you have any questions regarding this material, please do not hesitate to contact me at 202-336-7891.

Sincerely,

No. of Copies rec'd 0+1
List A B C D E

¹ "In the Matter of Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations", CC Docket No. 96-159, released July 15, 1997.

Attachments

cc: **C. Keller**
D. Harmon
A. Thomas

Verizon Pennsylvania Inc.

RE: Request for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) Between Verizon's Lehighton Exchange Area (Northeast 232 LATA) and the Palmerton Telephone Company's Palmerton Exchange Area (Philadelphia 228 LATA)

(1) Type Of Service(s):

Any available Residence Local Usage Options (Budget Usage Option, Local Area Standard Usage Package, Local Area Unlimited Usage Package, Local package, SoundDeal, SoundDeal Plus and the Hometown-Plus Usage Option). Available optional Business Local Usage Options (Budget Usage Option, Local Area Standard Usage Package, Local Area Business Valu-Pak Option, and the existing customer "grandfathered" Local Area Unlimited Usage Package).

(2) Direction of Service:

One-way ELCS (Lehighton – to - Palmerton).

(3) Exchanges Involved:

Between Verizon's Lehighton Exchange Area (Northeast 232 LATA) and the Palmerton Telephone Company's Palmerton Exchange Area (Philadelphia 228 LATA)

(4) Name of Carriers:

Presently, Verizon Pennsylvania Inc. is the local exchange carrier providing local service in the Lehighton Exchange Area and the Palmerton Telephone Company provided local service in the Palmerton Exchange Area. However, as of February 28, 2001, there were 208 Competitive Local Exchange Carriers (CLECs) with Pennsylvania Public Utility Commission - Certificates of Public Convenience (with an additional 47 CLEC's pending Commission certification) who could choose to provide local exchange service in the Lehighton and Palmerton Exchange Area's.

(5) State Commission Approval:

Attachment A is a copy of the Pennsylvania Public Utility Commission's Opinion and Order in Formal Complaint Docket No. C-00981941, adopted February 8, 2001 and entered March 15, 2001.

(6) Number of Access Lines or Customers:

<u>Exchange</u>	<u># Residence Lines</u>	<u># Business Lines</u>	<u>Total Lines</u>
Lehighton	7,170	1,220	8,390
Palmerton	3,713	1,743	5,456

(7) Usage Data (1997 EAS Traffic Usage Study):

Monthly Average Messages Per Line

Leighton: 2,656 messages or 0.34 messages per line (total lines in study = 7,861)

(8) Poll Results:

None required since there will be no change in local service monthly rates.

Leighton Exchange Information: Dial Tone Line Cell 4 and Usage Rate Group (URG) Classification A.

A. Monthly Rate: Residence Dial Tone Line for Cell 4:

1. Individual Line with Touch Tone, each = \$ 5.68
2. Individual Line with Rotary, each = \$ 4.75

B. Monthly Rate: Business Dial Tone Line for Cell 4

1. Individual with Touch Tone, each = \$ 17.73
2. Multi-Line with Touch Tone, each = \$ 15.63

C. Monthly Rate: Available Residence Optional Local Usage Packages (URG A)

1. Budget Usage Option, each = \$ 0.00 (\$.25 Local Calling Allowance)
2. Local Area Standard Usage Option, each = \$ 2.60 (\$4.00 Local Calling Allowance)
3. Local Area Unlimited Usage Option, each = \$ 3.80
4. Hometown-Plus Usage Option (one toll route), each = \$ 5.50
5. Hometown-Plus Usage Option (two toll routes), each = \$ 7.65

D. Monthly Rate: Available Business Optional Local Usage Packages (URG A)

1. Budget Usage Option, each = \$0.00 (rated per each local call)
2. Local Area Standard Usage Package Option, each = \$ 6.90 (\$8.00 Local Calling Allowance)
3. Local Area Valu-Pak Usage Option, each = \$ 9.20 (\$12.00 Local Calling Allowance)
4. Local Area Unlimited Usage Package Option, each = \$ 10.70 (Grandfathered Offering)

(9) Community of Interest Statement:

The Pennsylvania Public Utility Commission addressed the "community of interest" calling issues as part of its Opinion and Order (see Attachment A).

(10) Map:

Attachment B is a copy of a Verizon Pennsylvania Inc. LATA map section that shows the location of the Leighton and Palmerton Exchange Area's relative to the Northeast 232 LATA and the Philadelphia 228 LATA.

(11) Other Pertinent Information:

The Pennsylvania Public Utility Commission's (PUC) Extended Area Service (EAS) Regulations allows customers to file formal complaints regarding EAS, and gives the PUC the power to order Carriers to petition the FCC for ELCS. Attachment C is a copy of the PUC's EAS Regulations.

Attachment A.

Verizon Pennsylvania Inc.

**RE: Request for Limited Modification of LATA Boundaries to Provide
Expanded Local Calling Service (ELCS) Between Verizon's Lehigh Valley Exchange Area
(Northeast 232 LATA) and the Palmerton Telephone Company's Palmerton
Exchange Area (Philadelphia 228 LATA)**

- **Copy of the Pennsylvania Public Utility Commission's Opinion and Order in Formal Complaint Docket No. C-00981941, entered March 15, 2001.**

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held February 8, 2001

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Keith R. McCall

C-00981941

v.

Bell Atlantic – Pennsylvania, Inc.,
Respondent
And
Palmerton Telephone Company,
AT&T of Pennsylvania, Inc.,
Frontier Communications International,
MCI Telecommunications Corporation,
Sprint Communications Co., L.P.,
WorldCom Network Services, Inc., d/b/a
Wiltel, d/b/a LDDS,
Litel,
American Network Exchange, Inc.,
ATX Telecommunications,
BTI Econowats,
Cable & Wireless,
Cleartel Communications,
Eastern Telephone Systems,
Excel Communications,
North American Communications,
U.S. Wats,
Additional Respondents

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition are the Exceptions (Exc.) filed by the following Parties on April 3, 2000: AT&T Communications of Pennsylvania, Inc. (AT&T); MCI WorldCom Inc. (MCIW); and the Office of Consumer

Advocate (OCA). These Exceptions were filed in response to the Recommended Decision (R.D.) that was issued on March 14, 2000, by Administrative Law Judge (ALJ) Richard Lovenwirth. On April 13, 2000, Bell Atlantic-Pennsylvania, Inc.,¹ filed Replies to the Exceptions. (R.Exc).

The Parties also made the following filings with respect to the Exceptions. On April 13, 2000, Verizon filed a Motion to Strike Portions of the Exceptions filed by AT&T, MCIW, and the OCA. On April 21, 2000, the OCA filed an Answer to Verizon's Motion to Strike Portions of the Exceptions. On April 24, 2000, AT&T and MCIW each filed an Answer to Verizon's Motion to Strike Portions of the Exceptions. On May 4, 2000, Verizon filed a Response to the Answers to Verizon's Motion to Strike Portions of the Exceptions. On May 12, 2000, the OCA filed a Motion to Strike Verizon's Response to the Answers to Verizon's Motion to Strike Portions of the Exceptions.

History of the Proceedings

On November 18, 1998, Keith R. McCall (Complainant), a Representative in the Pennsylvania General Assembly, filed this Complaint on behalf of certain of his constituents. The Complaint seeks to include the Palmerton Telephone Company's (PTC) Palmerton exchange in Verizon's Lehighton exchange's local free calling area. On December 14, 1998, Verizon filed an Answer, New Matter, and Motion to Join PTC as an Indispensable Party to this proceeding. On January 20, 1999, Verizon filed a Motion to Dismiss, or In the Alternative to Join Indispensable Parties (*i.e.*, the universe of inter-exchange carriers [IXCs] registered to do business in Pennsylvania) to this proceeding because IXCs currently have the rights to carry toll traffic and their interests may be directly affected by the outcome of this proceeding. By Order issued on March 19, 1999, the ALJ joined PTC as an additional Respondent, along with the other IXCs listed in the caption above. (R.D., pp. 1-2).

On December 29, 1998, the OCA filed a Notice of Intervention. On January 28, 1999, the ALJ conducted a Telephonic Prehearing Conference. By letter

¹ Bell Atlantic-Pennsylvania, Inc. is now known as Verizon Pennsylvania Inc. Due to this name change, the relevant entity will be referred to herein as Verizon.

dated February 4, 1999, the Complainant amended the Complaint to request one-way extended area service (EAS) into the Palmerton telephone exchange from Verizon's Lehighon telephone exchange. Hearings were held in Scranton, PA. The record consists of 563 pages of Transcript, and three (3) statements. (R.D., pp. 2-3).

On March 14, 2000, the ALJ issued his Recommended Decision in which he recommended, *inter alia*, that the Complaint be sustained, in part, and that optional calling plans (OCPs) be implemented by certain IXCs as specified in the Recommended Decision. (R.D., pp. 19-22). As outlined above, three (3) Parties filed Exceptions. Other pleadings were also filed as outlined above.

Discussion

ALJ's Recommended Decision

Premised on his review, evaluation, and analysis of the record evidence as developed in this proceeding, the ALJ found that virtually no adverse impact will be felt upon the Lehighon exchange community if EAS is denied and if OCPs are to be provided by the IXCs, consistent with Section 63.73(c) of the Commission's Regulations, 52 Pa. Code §63.73(c). The ALJ concluded that it was clearly within the purview of the Commission's jurisdiction to order IXCs to implement OCPs. (R.D., p. 8).

Preliminary Motions

Before addressing the issues raised in the Exceptions, we will address certain issues raised by the preliminary motions herein.

The OCA's Motion to Strike

The OCA filed Exceptions to the ALJ's Recommended Decision on April 3, 2000. On April 13, 2000, Verizon filed Reply Exceptions and a Motion to Strike Portions of the OCA's Exceptions. On or about April 21, 2000, the OCA, AT&T, and MCIW filed Answers to Verizon's Motion to Strike.

Thereupon, Verizon filed a Response to the Answers on May 4, 2000. On May 12, 2000, the OCA filed a Motion to Strike Verizon's Response on the basis that the Commission's Rules of Administrative Procedure do not allow for the filing of a Response to an Answer to a Motion. (OCA's Motion to Strike, filed on May 12, 2000, pp. 1-4).

On consideration of the OCA's Motion to Strike, we find it is meritorious, and we shall, therefore, grant the OCA's request. According to Section 5.103(b) of our Rules of Administrative Procedure, 52 Pa. Code §5.103(b), a motion may be made in writing at any time. Section 5.103(c), 52 Pa. Code §103(c), provides a period of ten (10) days within which a party can answer or object to a motion. We note that no provision exists in our Rules of Administrative Procedure that would permit the filing of a Response to an Answer to a Motion. Our Rules of Administrative Procedure would allow a party to seek a waiver of our Rules in order to file such a pleading. However, Verizon did not seek such a waiver nor did it petition to file a Response.

Accordingly, as stated above, the OCA's Motion to Strike that was filed on May 12, 2000, shall be granted, and we shall disregard Verizon's Response to the Answers filed by AT&T, MCIW, and the OCA.

Verizon's Motion to Strike

As outlined above, on April 13, 2000, Verizon filed a Motion to Strike Portions of Exceptions filed by AT&T, MCIW, and the OCA (Motion to Strike).

Verizon moved to strike certain portions of AT&T's Exceptions.² On review of the relevant portion of Verizon's Motion to Strike, we find that it lacks merit.

² The specific portions of AT&T's Exceptions that Verizon seeks to have stricken are outlined in Paragraphs 4(a) through 4(d) of its Motion, found on pages 3-4 thereof.

We have reviewed the contested portions of AT&T's Exceptions, and we find that they refer to undisputed matters of public record. Some of the pertinent matters are set forth in tariffs filed with the Commission, or are even publicly posted on the Commission's website. For these reasons, Verizon's Motion to Strike, as it relates to portions of AT&T's Exceptions, is denied.

With respect to MCIW's Exceptions, Verizon moved to strike much of those Exceptions, arguing that MCIW did not participate in the hearings and, accordingly, has no right to except to the ALJ's decision because of lack of evidence on the record. Specifically, Verizon objects to the portion of MCIW's Exceptions wherein it argues on behalf of "the interexchange carriers (IXCs)" or "all IXCs." Verizon points out that only AT&T participated in the evidentiary portions of this proceeding and, accordingly, there is no basis on which to allow MCIW to presume facts and attitudes held by other IXCs. Verizon argues that, without any evidence of record, imputing evidence or positions to other IXCs is not appropriate. (Verizon Motion to Strike, pp. 2-3).

On review of Verizon's Motion to Strike, as it relates to portions of MCIW's Exceptions, we find that it lacks merit. In the instant proceeding, MCIW excepted to the ALJ's decision, stating that the ALJ had incorrectly concluded that, although the criteria was met for EAS polling, the law would allow for an OCP as an equivalent remedy. According to MCIW, the ALJ further incorrectly concluded that he could design the OCP at certain rates, and impose them on the IXCs.

On review of this issue, we conclude that MCIW was within its rights to argue points of law on behalf of itself and on behalf of all similarly situated IXCs. We further conclude that MCIW may properly argue for what it views as the appropriate application of access charges. Accordingly, because we conclude that MCIW was within its rights to make the above-described arguments, Verizon's Motion to Strike, as it relates to portions of MCIW's Exceptions, is denied.

Finally, Verizon moved to strike certain portions of the OCA's Exceptions.³ In the relevant portion of its Motion to Strike, Verizon challenges two (2) sentences in the OCA's Exceptions. The first sentence contains a reference to many customers continuing to pay "high toll charges" and the other sentence contains a reference to bills being confusing or becoming "even more confusing." Verizon argues that there is no "evidence of record" to support these two (2) assertions.

On review of the relevant portion of Verizon's Motion to Strike, we find that it also lacks merit. We have reviewed the contested portions of the OCA's Exceptions, and we find that they are founded on evidence of record in this proceeding, and/or on reasonable inferences to be drawn therefrom. For these reasons, we shall deny Verizon's Motion to Strike, as it relates to portions of the OCA's Exceptions.

Accordingly, in light of the preceding discussion, Verizon's Motion to Strike is denied in its totality.

Exceptions

We note that, in his Recommended Decision, the ALJ made specific Findings of Fact and Conclusions of Law. (I.D., pp. 3-6, and 19-21, respectively). We incorporate those herein by reference, unless modified or reversed, expressly or by necessary implication, by this Opinion and Order.

We further note that any issue or exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. (*Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984)).

³ The specific portions of the OCA's Exceptions that Verizon seeks to have stricken are outlined in Paragraphs 5(a) and 5(b) of its Motion, found on page 5 thereof.

As noted above, the ALJ recommended, *inter alia*, that the instant Complaint be sustained, in part, and that OCPs be implemented by certain IXC as specified in the Recommended Decision. (R.D., pp. 19-22). Specifically, the ALJ denied the requested EAS and, instead, ordered relief not requested in the Complaint. In that regard, he recommended that IXCs shall file OCPs for calls from Lehighon to Palmerton that meet the following criteria: a monthly service fee of \$4.00, a block of calling time not exceeding 300 minutes per month for \$3.00, an additional block of 1,000 minutes for \$2.00, and an additional block for usage above 1,000 minutes for \$1.00. (R.D., p. 10).

Also, as noted above, AT&T, MCIW (collectively, the active IXCs) and the OCA filed Exceptions to the ALJ's Recommended Decision.⁴ Read together, these Exceptions address two (2) primary issues: (1) the propriety of the ALJ's mandating the filing of an OCP by the IXCs joined in this proceeding; and (2) whether the ALJ erred in not granting EAS from the Lehighon exchange to the Palmerton exchange. We will address all the Exceptions in this organizational framework.

Both of the active IXCs argue that the ALJ does not have the authority to mandate the particular OCP contained in his Recommended Decision, and that the OCP mandated by the ALJ may violate state and federal laws. The active IXCs further allege that the OCP mandated by the ALJ constitutes illegal toll rate deaveraging and is confiscatory. MCIW argues further that the mandated OCP would constitute an undue burden on the IXCs' billing systems, and that Chapter 30 requires only one (1) OCP per IXC. (MCIW Exc., pp. 7-14; AT&T Exc., pp. 2-13). Also, AT&T excepts to the ALJ's finding that it did not have a properly filed OCP. (AT&T Exc., pp. 2-7).

The active IXCs also except to the OCP mandated by the ALJ on the basis that they must be able to recover their costs of service for this particular route and offering. (AT&T Exception D, ¶¶ 14-18; MCIW Exception II.A, pp. 7-9).

On review of this issue, we conclude that the ALJ erred in his determination to order IXCs to offer plans that do not necessarily recover all costs directly associated

⁴ By letter dated April 3, 2000, Representative McCall indicated that he joins in the Exceptions filed by the OCA.

with that service. Before we discuss the specifics as to why we disagree with the ALJ-mandated OCP, we believe it is important to first address the pertinent standards that we use for granting EAS.

We note that our Regulations provide that an interLATA route qualifies for EAS if the monthly calling frequency is 5.50 calls or more per access line to the receiving exchange. (52 Pa. Code §63.74(2)).⁵ In addition, our Regulations provide that the Commission may grant EAS in response to a complaint based upon an evaluation of the following criteria:

- (1) The amount of toll charge traffic between the two exchanges.
- (2) The cost to the utility of implementing extended area service.
- (3) The potential increase in local service charge due to implementation of EAS versus the current cost to subscribers for interexchange toll calls.
- (4) The demography and proximity of the exchanges as indicating community of interest.
- (5) The availability of alternatives to EAS.
- (6) The economic effect on the community if the local service area is not extended.

52 Pa. Code §63.77.

The record indicates that the ALJ evaluated the evidence in light of these criteria. (R.D., pp. 15-18). He concluded that the evidence weighed in favor of granting EAS on the first three (3) criteria and weighed "heavily" in favor of granting EAS on the fourth criterion. (R.D., pp. 16-17). On the fifth criterion, the ALJ referred to the OCPs that he ordered (described above) and concluded that these OCPs would provide a viable alternative to EAS. As such, the ALJ noted that this factor weighed heavily against granting EAS. With regard to the sixth criterion, the ALJ concluded that the evidence

⁵ Where the calling frequency is less than 5.5 but more than 2.0 calls per month, the regulations require interexchange carriers to file optional calling plans. (52 Pa. Code §63.73(c)). These plans will be discussed later in this Opinion and Order.

weighed against EAS since the OCPs would eliminate any economic harm to the community. Considering the evidence and criteria as a whole, the ALJ found that the OCA and Representative McCall failed to satisfy their burden of proving that EAS was warranted, primarily because of the availability of the OCPs that the ALJ ordered. (R.D., p. 18).

We agree with the ALJ's analysis of the first four (4) criteria. With regard to the first criterion, the record evidence demonstrated a calling frequency of 4.62 calls per access line, per month. Although this level is below the 5.5 calls threshold for automatically granting EAS, we are of the opinion that, when viewed in light of the other record evidence that indicates a strong community of interest as discussed below, our discretion to grant EAS is supportable.

With regard to the second criterion (*i.e.*, the cost of granting EAS), we agree with the ALJ that the \$63,400 cost to Verizon for installing additional trunks to implement EAS "is not a relatively large sum." (R.D., p. 16). We believe that this criterion also weighs in favor of granting EAS. We also agree with the ALJ's conclusion that criteria (3) and (4) (*i.e.*, whether granting EAS will increase local service charges, and whether a community of interest exists within the proposed EAS area, respectively) both weigh in favor of granting EAS.

This brings us to the OCPs mandated by the ALJ in the Recommended Decision. With regard to the ALJ's analysis of criterion (5) (*i.e.*, alternatives to EAS, or OCPs), we believe it is necessary to review the propriety of the OCPs that he ordered. It is important to recognize at the outset that the relief sought in the Complaint concerns EAS and not OCPs. We note that while Section 63.77(5) calls for an evaluation of alternatives in deciding whether to grant a complaint seeking EAS, the regulation does not suggest that an EAS complaint proceeding is the appropriate time or place to develop and enforce alternatives to EAS. Accordingly, we disagree with the ALJ's approach of fashioning an OCP in an EAS complaint case, and then using the OCP as a basis for denying EAS.

In evaluating the OCPs ordered by the ALJ, we believe it is important to consider two (2) additional issues: (1) whether the evidence of record supports the OCPs, and (2) whether AT&T's Commission-approved OCP was proven to be legally deficient. On the first issue, the evidence plainly does not support the one-size-fits all OCP ordered in the Recommended Decision. No mention of the plan occurs in the ALJ's Findings of Fact, because no evidence existed to support it. We disagree with Verizon's argument (Replies to Exceptions, pp. 3, 4, 6) that the burden was on the IXCs to introduce evidence regarding their costs in this proceeding because this was an EAS complaint case, and not a rate case.

With regard to the second issue, we also disagree with the conclusion in the Recommended Decision that AT&T's Commission-approved OCP does not comply with the Regulations. It appears that the ALJ found the OCP deficient because it did not offer a "block of time for calls for a flat fee and a continuing discount for usage exceeding the initial block." (R.D., pp. 4, 9, quoting 52 Pa. Code §63.73(c)(1)). However, we note that the Regulation in Section 63.73(c)(1) does not necessarily require this type of plan. Read as a whole, the Regulation requires that when the monthly calling frequency from one exchange to another over an interLATA route exceeds 2.00 calls per access line, the IXC shall offer one (1) of the following rate options:

- (1) The ability to purchase a block of time for calls for a flat fee and a continuing discount for usage exceeding the initial block of time to the receiving exchange during each billing period.
- (2) Another alternative rate option approved by the Commission.

52 Pa. Code §63.73(c)(1),(2).

It is clear that *either* a "block of time" type of OCP or another alternative can satisfy the IXC's obligation under this language. In the case of AT&T, this Commission had already approved such an alternative. The ALJ's interpretation of this Regulation may be due to his misstatement of the text of the regulation – he inserted the word "and" at the end of §63.73(c)(1), which may have led him to conclude that both a block of

time plan *and* an alternative must be offered.⁶ This misstatement may have originated in Verizon's Main Brief (p. 22), although the error was pointed out in AT&T's Reply Brief (p. 3).

Accordingly, we conclude that the ALJ erred in ordering IXCs to implement an OCP that was not supported by the evidence, and that he erred in concluding that AT&T's OCP did not comport with the Commission's regulations. As such, we shall grant the active IXCs' Exceptions to the extent they are consistent with this conclusion.

We believe it is important to note that MCIW's Exception C, found on pages 10-12 of its Exceptions, sets forth the proposition that "Chapter 30 requires only one optional calling plan per IXC." We note, however that MCIW cites no statutory support for this proposition. In fact, we note that several IXCs (i.e. AT&T) and LECs (i.e. Verizon PA) have more than one approved OCP. On this basis, this MCIW Exception is denied.

AT&T, MCIW, and the OCA object to the ALJ's conclusion that EAS is not the proper remedy in this proceeding. (OCA Exc., pp. 3-11; AT&T Exception E; MCIW Exception I). AT&T, MCIW, and the OCA further contend that the ALJ improperly weighed the evidence presented in support of the discretionary EAS criteria at Section 63.77 of the Code, 52 Pa. Code §63.77 (Section 63.77).

All the Parties hereto agree that this case is to be decided pursuant to the Commission's discretionary criteria at Section 63.77. Putting aside the OCPs ordered by the ALJ, we believe that criteria (5) and (6) in Section 63.77 also weigh in favor of granting EAS. The testimony indicated that the Commission-approved OCP offered by AT&T did not meet the needs of Lehighton residents. (OCA Main Brief, p. 8). Accordingly, it would be speculative to assume that any OCP filed by another IXC would satisfy this need. Moreover, the bare possibility that the Commission could, following receipt of evidence regarding cost and other relevant factors, order IXCs to file OCPs

⁶ We believe that the ALJ's reasoning regarding the alleged deficiencies in AT&T's OCP is not clear on its face. He may have also concluded that AT&T's OCP was not an "option" because it was too expensive (R.D., p. 9), and that AT&T's OCP was

more favorable to customers than the AT&T OCP, does not weigh against granting EAS; otherwise, the possibility that such OCPs could be ordered would always defeat an EAS request.

With regard to criterion (6) (*i.e.*, the economic impact if EAS is not granted), we believe that this criterion weighs in favor of EAS due to evidence that paying toll charges for calls to Palmerton harms both families and businesses in Lehigh. (OCA Main Brief, p. 9). As such, based on an analysis of all of the criteria, we believe that EAS should be granted from Lehigh to Palmerton. Accordingly, we shall grant the Exceptions of the AT&T, MCIW, and the OCA on this matter, to the extent they are consistent with this determination.

Before concluding, we believe it is important to note that we do not condone the failure of certain IXC's to file the required OCPs in accordance with our Regulations. Therefore, we shall order all IXC's that have not adequately complied with our Regulations to file the pertinent OCPs within thirty (30) days of the date of entry of this Opinion and Order for our approval. We shall also direct the Law Bureau to review AT&T's OCP for the purpose of determining whether the rates provided in that plan are reasonable and provide a meaningful savings for its subscribers. If the rates provided in AT&T's OCP are not appropriate, the Law Bureau is further directed to take the necessary action that will ensure that AT&T offers just and reasonable rates in its OCP.

Conclusion

We have carefully reviewed the record as developed in this proceeding, including the ALJ's Recommended Decision, the Exceptions filed thereto, and the various Motions filed in response to the Exceptions. Premised on our review, we conclude that the ALJ's Recommended Decision is not supported by the substantial and competent evidence in the record. Furthermore, we find that the Exceptions filed to the Recommended Decision are meritorious to the extent they are consistent with this Opinion and Order. As a result,

not approved by the Commission. (R.D., p. 8). In any event, we agree with AT&T's Exceptions, pp. 5-7, which effectively refutes these assertions.

we shall grant those Exceptions and reverse the Recommended Decision of the ALJ;
THEREFORE,

IT IS ORDERED:

1. That the Exceptions filed on April 3, 2000, by AT&T Communications of Pa., Inc., to the Recommended Decision of Administrative Law Judge Richard M. Lovenwirth herein are granted, to the extent that they are consistent with this Opinion and Order.

2. That the Exceptions filed on April 3, 2000, by MCIW WorldCom, Inc., to the Recommended Decision of Administrative Law Judge Richard M. Lovenwirth herein are granted, to the extent that they are consistent with this Opinion and Order.

3. That the Exceptions filed on April 3, 2000, by the Office of Consumer Advocate to the Recommended Decision of Administrative Law Judge Richard M. Lovenwirth herein are granted, to the extent that they are consistent with this Opinion and Order.

4. That the Motion to Strike the Response of Bell-Atlantic-Pa., Inc., to the Answers of: (1) AT&T Communications of Pa., Inc.; (2) MCI WorldCom, Inc.; and (3) the Office of Consumer Advocate, which was filed on May 12, 2000, is hereby granted.

5. That the Motion to Strike Portions of the Exceptions of: (1) AT&T Communications of Pa., Inc.; (2) MCI WorldCom, Inc.; and (3) the Office of Consumer Advocate, which was filed by Bell-Atlantic-Pa. on April 13, 2000, is hereby denied.

6. That the Recommended Decision of Administrative Law Judge Richard M. Lovenwirth herein, which was issued on March 14, 2000, is reversed.

7. That the Complaint filed by Keith R. McCall on November 18, 1998, at Docket No. C-00981941, as amended, is hereby sustained.

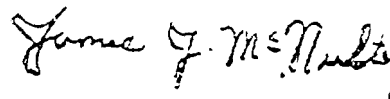
8. That within sixty (60) days of the date of entry of this Opinion and Order, and in accordance with our regulations in 52 Pa. Code §63.75(6), Verizon Pennsylvania Inc. is directed to apply for the necessary waiver of the Federal antitrust restrictions to allow it to implement EAS from Lehighton to Palmerton.

9. That within 180 days after the waiver of the Federal antitrust restrictions is granted, Verizon Pennsylvania Inc. shall implement EAS from Lehighton to Palmerton without further order of the Commission.

10. That within 60 (sixty) days of the date of entry of this Opinion and Order, the Law Bureau is directed to review AT&T's Optional Calling Plan for the purpose of determining whether the rates provided in that plan are reasonable and provide a meaningful savings for its subscribers. If it is determined that the rates provided in AT&T's Optional Calling Plan are not appropriate, the Law Bureau is further directed to take the necessary action that will ensure that AT&T offers a just and reasonable Optional Calling Plan.

11. That within 60 (sixty) days of the date of entry of this Opinion and Order, the Bureau of Fixed Utility Services, in conjunction with the Law Bureau, shall prepare a Secretarial Letter, to be delivered to all Interexchange Carriers certificated to provide service in Pennsylvania, and which do not have approved OCPs, that directs them to file the appropriate Optional Calling Plans in compliance with our regulations at 52 Pa. Code §63.73(c).

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: February 8, 2001

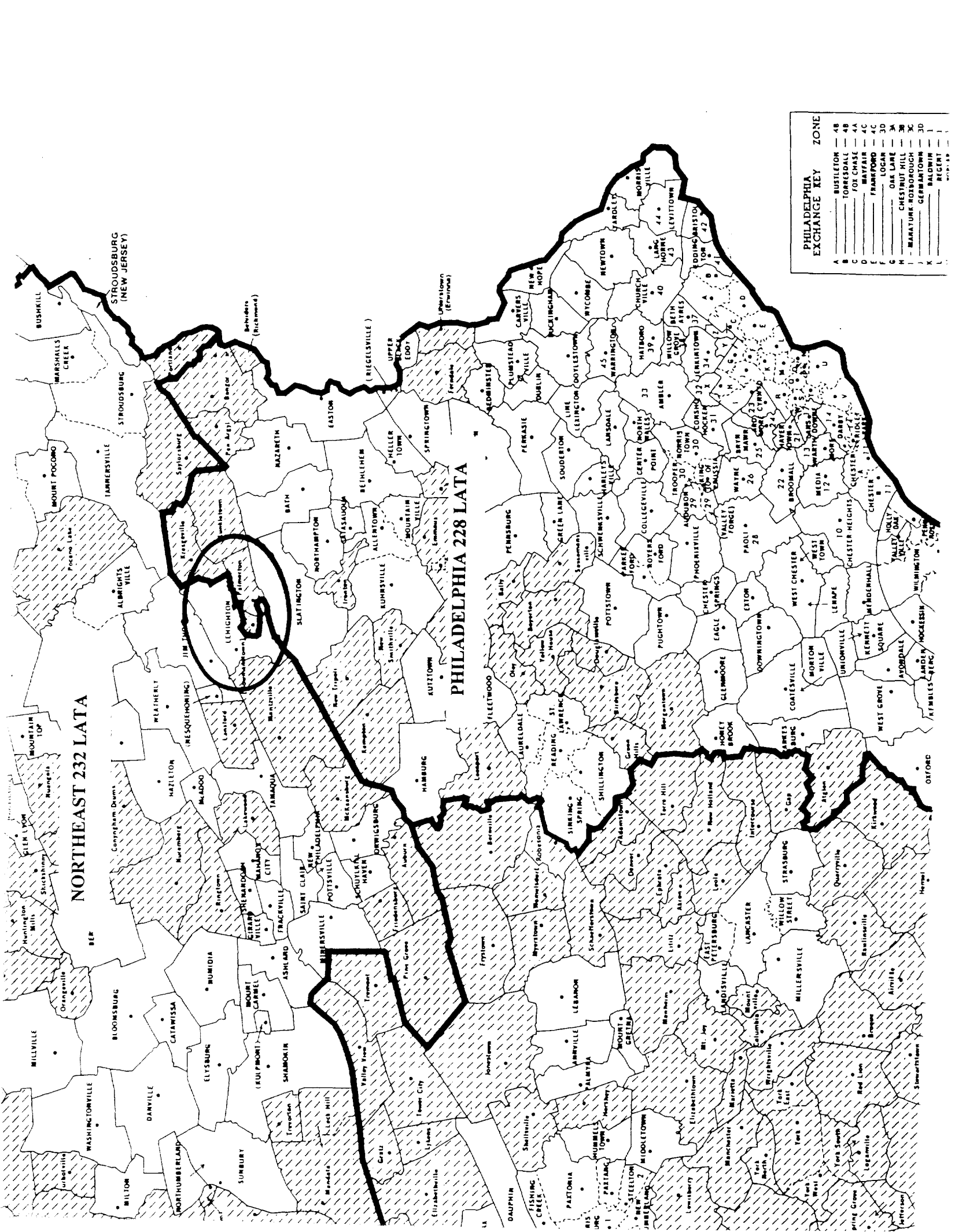
ORDER ENTERED: **MAR 15 2001**

Attachment B.

Verizon Pennsylvania Inc.

**RE: Request for Limited Modification of LATA Boundaries to Provide
Expanded Local Calling Service (ELCS) Between Verizon's Lehigh Valley Exchange Area
(Northeast 232 LATA) and the Palmerton Telephone Company's Palmerton
Exchange Area (Philadelphia 228 LATA)**

- **Copy of a Verizon Pennsylvania Inc. LATA map section that shows the location of the Lehigh Valley and Palmerton Exchange Area's relative to the Northeast 232 LATA and the Philadelphia 228 LATA.**



Attachment C.

Verizon Pennsylvania Inc.

**RE: Request for Limited Modification of LATA Boundaries to Provide
Expanded Local Calling Service (ELCS) Between Verizon's Lehigh Valley Exchange Area
(Northeast 232 LATA) and the Palmerton Telephone Company's Palmerton
Exchange Area (Philadelphia 228 LATA)**

- **Copy of the Pennsylvania Public Utility Commission's EAS Regulations.**

Pennsylvania Public Utility Commission
EXTENDED AREA SERVICE (EAS) REGULATIONS - PA.

Subchapter F. EXTENDED AREA SERVICE

- 63.71. Definitions.
- 63.72. Traffic Usage Studies.
- 63.72a. InterLATA Traffic Studies.
- 63.73. Optional Calling Plans.
- 63.74. EAS Polls.
- 63.75. Subscriber Polls.
- 63.76. EAS Complaints.
- 63.77. Evaluation Criteria.

63.71. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

EAS Extended Area Service: The expansion of a local calling area to include additional exchanges.

Exchange: An area served by one or more central offices which has a unique local calling area and a defined rate center from which toll distances are measured.

Full Billing and Collection Agreement: An agreement under which an interexchange carrier contracts with the local exchange carrier to bill and collect the revenues for message toll service calls placed by end users through the interexchange carrier as the presubscribed carrier.

Interexchange Toll Rates: Telephone rates, usually based in part on the length of a telephone call, which are applied to calls between exchanges that are not in the same local calling area.

LATA: A local access and transport area as designated by Federal law.

Local Calling Area: The area, consisting of one or multiple telephone exchanges, between which calls may be completed without having interexchange toll rates applied.

Local Exchange Carrier: A public utility which is certificated to provide intraexchange telephone service.

Optional Calling Plan: A tariff provision which establishes the rate option to be offered to residential and business subscribers in exchanges which qualify for alternatives to EAS under 63.73 (relating to optional calling plans).

Qualified Noncontiguous Exchanges: Exchanges with toll rate centers within 16 miles of each other which do not geographically border each other but which meet the following criteria:

(i) The call-frequency standards between the exchanges established under 63.74 (relating to EAS polls) are met in at least one direction.

(ii) The local calling area of the calling exchange is contiguous to the receiving exchange.

Subscriber: A person or entity which contracts directly with a telephone utility for telephone service.

Traffic Study Interexchange Carriers: The five most active interexchange carriers in the service territory of a local exchange carrier as determined by a biennial review of interLATA access charge level.

63.72. Tariff Usage Studies.

Local exchange carrier shall conduct a biennial Interexchange toll traffic usage study. The study shall measure traffic over both intraLATA and interLATA routes. The study shall measure the average calling frequency between contiguous exchanges and between each exchange and each noncontiguous exchange having a toll rate center within 16 miles. On intraLATA routes only, the study shall also measure the percentage of total access lines within the exchange over which the calls are placed. In measuring calling frequency, all calling classes shall be considered collectively, including those who have elected optional calling plans under 63.73 (relating to optional calling plans). The study shall measure usage in a representative 30-day period within the 12-month period preceding the study. The local exchange carrier shall prepare a report containing results of the study. The report is required to address only routes which equal or exceed 1.50 calls per access line per month. The report shall be filed with the Commission with a copy to the Office of Consumer Advocate on or before October 1 of each survey year. The report will be treated as proprietary and shall be filed under protective seal. The Commission and the Office of Consumer Advocate will release the results of the report, upon request, on a route specific basis to customers or customer representatives. Traffic usage data for routes with less than 1.50 calls per access line per month shall be submitted by local exchange carriers upon request by the Commission or the Office of Consumer Advocate.

63.72a. InterLATA Traffic Studies.

(a) By January 31 of each year in which a biennial traffic study is due, each local exchange carrier will identify and formally notify the Commission of the traffic study interexchange carriers in its service territory. The identity of the traffic study interexchange carriers shall be based upon review of the access charge levels from the most recent 12-month period available. Each local exchange carrier shall concurrently notify each traffic study interexchange carrier of the following:

(1) That the interexchange carrier's traffic will be included in the local exchange carrier's traffic study under this subchapter.

(2) The format which the local exchange carrier will utilize in its traffic usage study.

(3) The representative month the local exchange carrier will use in its study.

(b) Each traffic study interexchange carrier shall provide the local exchange carrier with data which identifies the relevant interexchange traffic completed by the interexchange carrier and which originated in the local exchange carrier's service territory for the representative month used by the local exchange carrier. The data shall be submitted to the local exchange carrier by June 1 of each year in which a biennial traffic usage study is due. The data submitted by traffic study interexchange carriers may not include traffic for which the interexchange carrier bills through the local exchange carrier under a full billing and collection agreement.

(c) The data submitted by each traffic study interexchange carrier shall be organized consistent with the following:

(1) The data shall be in the format specified by the local exchange carrier for the traffic usage study.

(2) The data shall identify the total number of calls completed by the traffic study interexchange carrier and which originated in each exchange in the local exchange carrier's service territory for each interLATA route which requires study under 63.72 (relating to traffic usage studies) for the representative month.

(3) The data shall identify the total number of access lines presubscribed to the traffic study interexchange carrier in each exchange for which data is submitted under paragraph (2).

(4) Data submitted by a traffic study interexchange carrier to a local exchange carrier shall be considered proprietary to the traffic study interexchange carrier and may not be used by the local exchange carrier for a purpose other than preparing its traffic usage study.

(5) Each traffic study interexchange carrier may petition the Commission to waive the submission of a portion of the data required to be submitted under this section. Each waiver petition shall include the estimated costs of submitting the data and the relative amount of traffic which the data represents. The Commission will approve a waiver petition only if it finds that the costs to the interexchange carrier outweigh the value of the data to the traffic usage study.

(d) Upon receiving the traffic study interexchange carrier data, each local exchange carrier shall complete the following in preparing the interLATA component of the traffic usage study:

(1) Collect and analyze the traffic data for each traffic study interexchange carrier for calls completed by the interexchange carrier which are billed through the local exchange carrier under a full billing and collection agreement.

(2) Aggregate the traffic data it collects and analyzes under full billing and collection agreements with the traffic data it receives from each traffic study interexchange carrier. Each local exchange carrier shall report the aggregate results of the interLATA traffic study to the Commission in its biennial traffic usage study filed under 3.72.

63.73. Optional Calling Plans.

(a) When biennial interexchange toll traffic usage studies reveal an average monthly calling frequency of 2.00 or more calls per access line from one exchange to another and where at least 25% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange over a route for which a local exchange carrier provides toll service, a local exchange carrier shall offer one of the following rate options to each residential and business subscriber within the calling exchange:

(1) The ability to purchase for a flat fee a block of time for calls and a continuing discount for all usage exceeding the initial block; of time to the receiving exchange during each billing period.

(2) Another alternative rate option approved by the Commission.

(b) When an exchange qualifies for an optional calling plan over a route served by a local exchange carrier, the local exchange carrier shall notify each residential and business subscriber within 60 days of the availability of the optional calling plan and shall provide to each subscriber a general description of the rates and benefits of the optional calling plan.

(c) When biennial interexchange toll traffic usage studies reveal an average monthly calling frequency of 2.00 or more calls per access line from one exchange to another over an interLATA route, each traffic study interexchange carrier serving the route shall offer one of the following rate options to each residential and business subscriber to whom the traffic study interexchange carrier provides toll service within the calling exchange:

(1) The ability to purchase a block of time for calls for a flat fee and a continuing discount for usage exceeding the initial block of time to the receiving exchange during each billing period.

(2) Another alternative rate option approved by the Commission.

(d) When an exchange qualifies for an optional calling plan over an inter-LATA route, each traffic study interexchange carrier serving the route shall notify each residential and business subscriber it serves in the exchange within 60 days of the availability of the optional calling plan and shall provide a description of the rates and benefits of the optional calling plan.

(e) A local exchange carrier and a traffic study interexchange carrier, serving a route which qualifies for an optional calling plan under a traffic usage study shall maintain in its tariff a provision which provides for establishment of an optional calling plan. The optional calling plan shall be consistent with subsection (a) or (b) and may establish flat fees to be charged for the installation of the optional calling plan.

(f) A local exchange or traffic study interexchange carrier may not terminate an optional calling plan to an exchange without express Commission approval.

Exchange Boundary Relief (PUC Criteria Used for EAS)

Exchange boundary relief was appropriate when the community of interest, similar to the criteria for extended area service cases under this regulation, had been established provided a party also established changed circumstances since creation of the exchange. In those cases, once this prima facie showing had been made, opponents must come forward with contrary evidence. If the opponents cannot counter that permissible inference, relief may be warranted. In those cases, expensive network reconfiguration must not be ordered unless all other reasonable and less

costly alternatives are unavailable. Such alternatives should include extended area service, optional local calling plans, PRS, optional calling plans, alternatives to extended area service, and a more efficient use of existing facilities. Warner v. CTE N.Inc, Pennsylvania Public Utility Commission, No. C-00902815, 1995 Pa. Puc. LEXIS 16 (January 25, 1995).

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63.74. EAS Polls.

Whenever a traffic usage study between contiguous exchanges or between qualified noncontiguous exchanges qualifies for EAS under paragraphs (1) and (2), a subscriber poll of the calling exchange shall be conducted by the local exchange carrier serving the calling exchange to determine if the local calling area should be extended.

(1) For intraLATA routes, a route qualifies for extended area service if it has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to another and where at least 50% of the access lines in the calling exchange have been used for 1.00 or more calls per month to the receiving exchange.

(2) For interLATA routes, a route qualifies for EAS if it has an average monthly calling frequency of 5.50 or more calls per access line from one exchange to another.

(3) A subscriber request for polling will not be considered a legal pleading and will not be subject to response by a utility or another party.

(4) A poll is not required if subscribers have affirmatively rejected the implementation of EAS from the calling exchange to the receiving exchange during the preceding 2 years.

(5) Two-way balloting will not be required unless usage standards are met in both directions.

(6) If two-way balloting is required and if the same telephone utility serves each exchange, the utility shall poll subscribers in each exchange for EAS into the other exchange. If different telephone utilities serve each exchange, each utility shall poll its own subscribers.

(7) A poll is not required when usage standards are met on a specific route and there will be no increase in the local service charge for extending the local calling area of an exchange. In this instance, one-way EAS shall be implemented over the qualifying route.

(8) When usage standards are met in both directions, two-way balloting is not required if there will be no increase in the local service charge for extending the local calling area for one of the two exchanges. If one of the two exchanges will receive an increase, than that exchange shall be polled and, if the exchange polled adopts EAS two-way EAS shall be implemented. Otherwise, one-way EAS shall be implemented on the route where there will be no increase.

(9) If circumstances require, the Commission may specify additional conditions under which polls shall be conducted.

(10) A local exchange carrier may petition the Commission for waiver of provision of this section to address unique circumstances.

63.75. Subscriber Polls.

The following rules apply to EAS subscriber polls:

(1) Within 180 days of the submission of traffic usage data indicating that a route qualifies for EAS under 63.74 (relating to EAS polls), a local exchange carrier shall file a petition with the Commission requesting approval of a proposed transmittal letter and ballot which includes an estimate of the increase in the charge for local service to the Commission as a result of extending the local calling area. The Commission will approve a transmittal letter and ballot which shall include an estimate of the increase in the charge for local service, if any, due to the expansion of the local calling area.

(2) The local exchange carrier shall mail one approved ballot to each subscriber in the calling exchange. The local exchange carrier may tabulate the ballots itself but shall submit to the Bureau of Safety and Compliance a list of customers to be polled and their telephone numbers prior to sending out ballots. Upon completion of tabulation by a local exchange carrier, the local exchange carrier shall submit the original returned ballots to the Bureau of Safety and Compliance and shall submit a verified report to the Commission detailing the results of the poll. If the local exchange carrier does not tabulate the ballots itself, the ballots sent by the local exchange carrier to the subscribers shall be preaddressed, postage prepaid postcards to be returned to the Commission for tabulation.

(3) At least 50% of the ballots from an exchange shall be returned for a poll to be considered valid.

(4) In a valid poll, if 50% of the ballots returned from an exchange are in favor of EAS, the affected local exchange carriers shall implement EAS to the receiving exchange.

(5) In cases where interLATA EAS is implemented, telephone service between the calling exchange and the receiving exchange shall be transferred from the interexchange carriers serving the calling exchange to the local exchange carrier serving the calling exchange.

(6) In cases where the local exchange carrier is prohibited from providing service between the calling exchange and the receiving exchange by Federal antitrust consent decree restrictions and a waiver is necessary to implement EAS, the local exchange carrier shall apply for a waiver of Federal antitrust restrictions to allow it to implement EAS. The request for waiver will be made within 60 days of a Commission order or Secretarial Letter approving EAS. The Commission will file a statement affirmatively supporting the waiver application.

63.76. EAS Complaints.

A formal complaint may be filed seeking the implementation of EAS. A complaint will be evaluated according to the criteria in 63.77 (relating to evaluation criteria). If multiple telephone utilities are involved, each affected utility shall be an indispensable party to the proceeding. An administrative law judge may, as part of an initial decision, recommend the conduct of subscriber polls under 63.75 (relating to subscriber polls) to determine if EAS should be implemented. The provisions of this subchapter do not prohibit the filing of complaints seeking the implementation of EAS between noncontiguous exchanges.

63.77. Evaluation Criteria.

The Commission will consider the following criteria in evaluating EAS complaints:

- (1) The amount of toll charge traffic between the two exchanges.
- (2) The cost to the utility of implementing extended area service.
- (3) The potential increase in local service charge due to implementation of EAS versus the current cost to subscribers for interexchange toll calls.
- (4) The demography and the proximity of the exchanges as indicating community of interest.
- (5) The availability of alternatives to EAS.
- (6) The economic effect on the community if the local service area is not extended.